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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket 92-265

Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

REPLY OF BELL ATLANTIC¹
ON PETITIONS FOR RECONSIDERATION

The comments of the cable incumbents and their programming affiliates on the petitions for reconsideration support modifying the Commission's program access rules in several significant respects. Like the petitioners themselves, these commenters ask the Commission to exempt entire categories

~~of discriminatory conduct from its rules to require compliance~~

foreclosed by the express language of the 1992 Act. As a result, their claims must be rejected.

1. The Changes Supported By Cable Interests Are Foreclosed By The Express Language of the 1992 Act

While the comments filed by cable interests argue at length that the Commission should open gaping holes in its program access rules to the benefit of the cable incumbents, they do precious little to address the governing statute. The reason is simple. Each of the changes they support are foreclosed by the express language of the very statute the rules are designed to implement.

First, cable interests support modifying the Commission's rules to expressly permit broad categories of discriminatory conduct. For example, they argue that cable-affiliated programmers should be permitted to charge new distributors more for programming than they charge to cable operators (including their own affiliates) under existing contracts,² and to charge discriminatory rates if 5 percent or fewer of their revenues come from sales to affiliated cable operators.³

² See Reply of Time Warner Entertainment at 5-7 ("TWE Reply"); Reply of Landmark Communications at 7-8 ("Landmark Reply").

³ See Group W Comments at 7; Landmark Reply at 2-5.

The statute, however, expressly bars all discriminatory practices.⁴ It does not say that discrimination is barred except that new competitors may be discriminated against; nor does it say that discrimination is barred except where a programmer's sales to affiliates accounts for a small portion of its revenues. It says discrimination is barred -- period.⁵

Second, cable interests support requiring complainants to make particularized showings of harm in every case before their complaint will even be heard -- even in cases involving undue influence, discrimination and exclusive contracts.⁶ But Congress itself has already determined that these specific practices are per se unlawful, and no showing of harm can be required to establish a violation of the Act.⁷

Third, cable interests support limiting the geographic scope of the Commission's rules to only those areas where a cable

⁴ The only exceptions are differences that can be

operator affiliated with the particular programmer operates a cable system.⁸ Congress, however, prohibited all practices specified in the Act.⁹ It did not prohibit just some of those practices, nor did it give the Commission discretion to do so. In short, the Commission must prohibit the practices specified in the Act, regardless of where they occur.¹⁰

2. The Commission Should Provide Damages As A Remedy For Violations of Its Rules

In the one instance where the cable interests do rely heavily on the statutory language, they simply get it wrong. Specifically, the cable interests claim that the statute bars the Commission from providing damages as a remedy for violations of its rules,¹¹ but the opposite is true.

In fact, the 1992 Act expressly grants the Commission broad authority "to order appropriate remedies" for violations of the statute's program access provisions.¹² While the statute specifies that this includes the ability to set prices, terms,

⁸ Group W Comments at 7; Landmark Reply at 8-9; TWE Reply at 1-4.

⁹ 47 U.S.C. § 548(b)-(c).

¹⁰ See Bell Atlantic Comments at 8-9.

¹¹ See Opposition of Time Warner Entertainment at 5-6; Opposition of Liberty Media Corporation at 4-7; Opposition of Viacom International at 13-15; Opposition of Superstar Connection at 12-14.

¹² 47 U.S.C. § 548(e)(1).

and conditions for the sale of programming, it in no way limits the range of remedies that the Commission is empowered to provide.¹³ Consequently, the plain language of the statute gives the Commission unconstrained authority to award damages as well as other remedies in appropriate cases.

Moreover, the statute goes on to expressly provide that this broad grant of remedial power is "in addition to ... the remedies available under Title V or any other provisions of this Act."¹⁴ The cable interests acknowledge that "other provisions" in Title II of the Act expressly provide for damages relief, but they nonetheless argue that if Congress really meant to authorize damages as a remedy it could have specifically said so.¹⁵ By incorporating remedies that would be available under other provisions of the Act, however, that is precisely what Congress did.

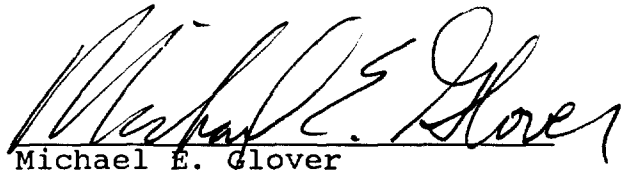
¹³ Id.

¹⁴ 47 U.S.C. § 548(e)(2).

¹⁵ E.g., Opposition of Liberty Media at 5. In addition, cable commenters would rewrite the statute to authorize only remedies that would be "available" in an action against a cable operator under other provisions of the Act. And because cable operators are not common carriers, they go on to argue that Title II remedies would not be available in such an action. That simply is not what the statute says, however, and these commenters' effort to rewrite Congress's language is unavailing.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Michael E. Glover". The signature is written in dark ink and is positioned above the printed name and address.

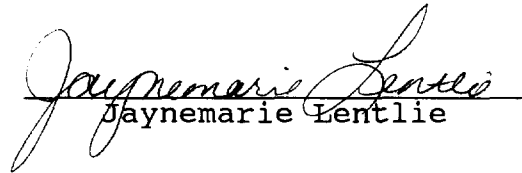
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply of Bell Atlantic on Petitions for Reconsideration" was served this 29th day of July, 1993, by delivery thereof by first class mail, postage prepaid, to the parties on the attached list.


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